

(iv) The stock assessment provides the following estimates: Fishing mortality rate (F) at MSY or an alternate maximum fishing mortality threshold (MFMT) to define OFL, biomass, biological reference points, stock status, OFL, and the respective uncertainties associated with each value; and

(v) No substantial retrospective patterns exist in the stock assessment estimates of fishing mortality, biomass, and recruitment.

(2) *Level 1 ABC determination.* Stocks assigned to Level 1 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(b) *Level 2 criteria.* (1) Assignment of a stock to Level 2 requires the SSC to determine the following:

(i) Key features of the stock biology, the fisheries that exploit it, and/or the data collection methods for stock information are missing from the stock assessment;

(ii) The stock assessment provides reference points (which may be proxies), stock status, and uncertainties associated with each; however, the uncertainty is not fully promulgated through the stock assessment model and/or some important sources of uncertainty may be lacking;

(iii) The stock assessment provides estimates of the precision of biomass, fishing mortality, and reference points; and

(iv) The accuracy of the minimum fishing mortality threshold and projected future biomass is estimated in the stock assessment using ad hoc methods.

(2) *Level 2 ABC determination.* Stocks assigned to Level 2 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(c) *Level 3 criteria.* (1) Assignment of a stock to Level 3 requires the SSC to determine that the stock assessment attributes are the same as those for a Level 2 assessment listed in § 648.20(d)(1) through (4), except that the stock assessment does not contain an estimated probability distribution of OFL or the stock assessment provided OFL probability distribution is judged by the SSC to not adequately reflect uncertainty in the OFL estimate.

(2) *Level 3 ABC determination.* Stocks assigned to Level 3 will have ABC derived by one of the following two methods:

(i) The SSC will derive the ABC by applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to an SSC-adjusted OFL probability distribution. The SSC will use default levels of uncertainty in the adjusted OFL probability distribution based on literature review and evaluation of control rule performance; or,

(ii) If the SSC cannot develop an OFL distribution, a default control rule of 75 percent of the F_{MSY} value will be applied to derive ABC.

(d) *Level 4 criteria.* (1) Assignment of a stock to Level 4 requires the SSC to determine that none of the criteria for Levels 1–3 found in § 648.20(a) through (c) were met.

(2) *Level 4 ABC determination.* Stocks assigned to Level 4 will have ABC derived using control rules developed on a case-by-case basis by the SSC based on biomass and catch history and application of the MAFMC's risk policy found in § 648.21(a) through (d).

§ 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) IOY, including RQ, DAH, DAP, butterfish mortality cap for the *Loligo* fishery, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish, which, subject to annual review, may be specified for a period of up to 3 years;

(3) IOY, including RQ, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel, which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid as specified in paragraph (e) of this section.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial, recreational, and research project landings; discards; current estimates of fishing mortality; stock status; the most recent estimates of recruitment; virtual population analysis results; levels of non-compliance by harvesters or individual states; impact of size/mesh regulations; results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity; results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Loligo and/or Illex Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a RQ and DAH. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RQ, if applicable.

(2) *Mackerel.* (i) Mackerel ABC must be calculated using the formula $ABC = T - C$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} at B_{MSY} or greater and decreases linearly to zero at $1/2 B_{MSY}$ or below. Values for F_{target} and B_{MSY} are as calculated in the most recent stock assessment.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of RQ, DAH, and TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH,

DAP, and JVP will be set after deduction for RQ, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson-Stevens Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential of mackerel producing countries.

(B) Total world import demand of mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors.

The IOY is composed of a RQ, DAH, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RQ, if applicable.

(iii) The butterflyfish mortality cap will be allocated to the *Loligo* fishery as follows: Trimester I—65 percent; Trimester II—3.3 percent; and Trimester III—31.7 percent.

(iv) Any underages of the butterflyfish mortality cap for Trimesters I or II will be applied to Trimester III of the same year, and any overages of the butterflyfish mortality cap for Trimesters I and II will be applied to Trimester III of the same year.

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterflyfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) Research quotas set from a range of 0 to 3 percent of IOY.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of *Loligo*, *Illex*, and butterflyfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(ii).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational harvest limit, set after reductions for research quotas.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the coefficient of variation (CV) based performance standard, fishery stratification, and/or reports.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterflyfish Committee will review the recommenda-

tions of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterflyfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish notification in the FEDERAL REGISTER proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterflyfish are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the FEDERAL REGISTER notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that

the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the Federal Register stating the reasons for such an action and providing a 30-day public comment period.

(f) *Distribution of annual Loligo squid commercial quota.* (1) A commercial quota will be allocated annually for *Loligo* squid into trimester periods based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research quota.* Prior to the Council's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Council.

(2) NMFS will convene a review panel including the Council's Comprehensive Management Committee, as well as technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips will have to be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the FEDERAL REGISTER in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant

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FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as part of the annual quota specification packages submitted by the Council; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the Council, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.745(b).

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 76 FR 60616, Sept. 29, 2011, § 648.21 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

The risk policy shall be used by the SSC in conjunction with the ABC control rules in § 648.20(a) through (d) to ensure the MAFMC's preferred tolerance for the risk of overfishing is addressed in the ABC development and recommendation process.

(a) *Stocks under a rebuilding plan.* The probability of not exceeding the F necessary to rebuild the stock within the specified time frame (rebuilding F or $F_{REBUILD}$) must be at least 50 percent, unless the default level is modified to a higher probability for not exceeding the rebuilding F through the formal stock rebuilding plan. A higher probability of not exceeding the rebuilding F would be expressed as a value greater than 50 percent (e.g., 75-percent probability of not exceeding rebuilding F, which corresponds to a 25-percent probability of exceeding rebuilding F).

(b) *Stocks not subject to a rebuilding plan.* (1) For stocks determined by the SSC to have an atypical life history, the maximum probability of overfishing as informed by the OFL distribution will be 35 percent for stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or higher (i.e., the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly

from the maximum value of 35 percent as the B/B_{MSY} ratio becomes less than 1.0 (i.e., the stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. An atypical life history is generally defined as one that has greater vulnerability to exploitation and whose characteristics have not been fully addressed through the stock assessment and biological reference point development process.

(2) For stocks determined by the SSC to have a typical life history, the maximum probability of overfishing as informed by the OFL distribution will be 40 percent for stocks with a ratio of B to B_{MSY} of 1.0 or higher (i.e., the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 40 percent as the B/B_{MSY} ratio becomes less than 1.0 (stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. Stocks with typical life history are those not meeting the criteria in paragraph (b)(1) of this section.

(c) For instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(d) If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.

§ 648.22 Closure of the fishery.

(a) *Closing procedures.* (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the mackerel fishery in the EEZ and the incidental catches specified for mackerel at § 648.25 will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that